

FILED

SEP 10 2003

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CATHY A. CATTERSON
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CHENG KOY SAECHO, aka Yao Cheng
Chow, Tom Ching Chow,

Defendant - Appellant.

No. 02-30229

D.C. No. CR-01-00165-A-JWS

MEMORANDUM*

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CHENG KOY SAECHAO,
Defendant - Appellant.

No. 02-30248

D.C. No. CR-01-00102-JWS

Appeal from the United States District Court
for the District of Alaska
John W. Sedwick, District Judge, Presiding

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

Argued and Submitted August 13, 2003
Anchorage, Alaska

Before: PREGERSON, CANBY, and McKEOWN, Circuit Judges.

Following a bench trial, the district court convicted and sentenced Cheng Koy Saechao for conspiracy to attempt to import opium, in violation of 21 U.S.C. § 963, attempt to import opium, in violation of 21 U.S.C. § 963, and facilitating transportation of smuggled goods, in violation of 18 U.S.C. § 545. Saechao raises three arguments on appeal. First, he contends that the district court erred in allowing the government to withdraw from a plea agreement negotiated by the two parties. Second, Saechao argues that his waiver of a jury trial was not voluntarily, knowingly, and intelligently made. Third, Saechao contends that he should have been granted a two point reduction under the Sentencing Guidelines for “acceptance of responsibility.” We reject these arguments and affirm.

Either party may withdraw from a plea agreement before it is approved and accepted by the court. United States v. Savage, 978 F.2d 1136, 1138 (9th Cir. 1992) (“[N]either the defendant nor the government is bound by a plea agreement until it is approved by the court.”); see also United States v. Fagan, 996 F.2d 1009, 1013 (9th Cir. 1993) (“A plea agreement that has not been entered and accepted by the trial court does not bind the parties.”). Although there is a detrimental reliance

exception to this general rule, Savage, 978 F.2d at 1138, Saechao cannot prove that he detrimentally relied on the plea agreement. Therefore, we conclude that the district court did not err by granting the government's motion to withdraw from the plea agreement and refusing to enforce the plea agreement.

We further conclude that Saechao's waiver of his right to a jury trial was voluntary, knowing, and intelligent, and in accordance with Federal Rule of Criminal Procedure 23(a).¹ The waiver was in writing; the court required it to be read to Saechao in translation before he signed it; the government consented to the waiver; the court accepted it; and the waiver was made voluntarily, knowingly, and intelligently. See Duarte-Higareda, 113 F.3d at 1002 (citing United States v. Cochran, 770 F.2d 850, 851 (9th Cir. 1985)).

The United States Sentencing Guideline § 3E1.1(a) requires the sentencing court to reduce Saechao's offense level by two levels "[i]f [he] clearly demonstrates acceptance of responsibility for his offense." We conclude that the district court did not abuse its discretion in denying Saechao an adjustment for acceptance of responsibility. See United States v. Mohrbacher, 182 F.3d 1041, 1052-53 (9th Cir. 1999).

¹ This court reviews *de novo* the adequacy of a jury waiver, which is a mixed question of fact and law. United States v. Duarte-Higareda, 113 F.3d 1000, 1002 (9th Cir. 1997).

AFFIRMED.